

October 3, 2022

**Via E-Mail**

David Tatman  
President, School Board

Evelyn Ware-Jackson  
Member, School Board

Dawn Chanet Collins  
Vice President, School Board

Jill Dyason  
Member, School Board

Mark Bellue  
Member, School Board

Michael Gaudet  
Member, School Board

Dadrius Lanus  
Member, School Board

Connie Bernard  
Member, School Board

Tramelle Howard  
Member, School Board

Dr. Sito Narcisse  
Superintendent



Louisiana

PO Box 56157  
New Orleans, LA 70156  
504-522-0628  
laclu.org

**Re: East Baton Rouge Parish Schools' Day of Hope Event**

Dear Dr. Narcisse, President Tatman, Vice President Chanet Collins, and members of the School Board:

The American Civil Liberties Union (“ACLU”) and the ACLU of Louisiana write to express serious concerns regarding the “Day of Hope” event recently sponsored by East Baton Rouge Parish School System (EBRS). Based on reports by students and parents, it appears that EBRS officials have violated the First and Fourteenth Amendments to the U.S. Constitution and Title IX of the Education Amendments of 1972.

On September 20, 2022, EBRS transported more than 2,000 high school seniors, via public-school buses, to an off-campus site for a day-long, district-wide event dubbed the “Day of Hope.”<sup>1</sup> EBRS told parents and students that the event was a college and career fair, during which students would receive professional and academic advice, hear guest speakers and live music, participate in “fun games” and receive free food.<sup>2</sup> The reality turned out to be much different.

The Day of Hope was held at a local church and co-sponsored by EBRS in partnership with the 29:11 Academy,<sup>3</sup> a Christian non-profit organization whose

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<sup>1</sup> Charles Lussier, Advocate, *Parents, students complain East Baton Rouge schools field trip was more like church service* (Sept. 21, 2022), [https://www.theadvocate.com/baton\\_rouge/news/education/article\\_97dc38c2-3a0d-11ed-a388-3f7b65892ceb.html](https://www.theadvocate.com/baton_rouge/news/education/article_97dc38c2-3a0d-11ed-a388-3f7b65892ceb.html).

<sup>2</sup> *Id.*; see also Bria Gremillion, *EBRPSS Day of Hope to offer college and career fair, live music, free food, more*, WFAB9 (Sept. 16, 2022), <https://www.wafb.com/2022/09/16/ebrpss-day-hope-offer-college-career-fair-live-music-free-food-more/>.

<sup>3</sup> See Scottie Hunter, *THE INVESTIGATORS: EBR Schools doubles down in defense of Day of Hope event*, WAFB (Sept. 22, 2022), <https://www.wafb.com/2022/09/22/investigators-eb-r-schools->

namesake is a Bible verse from Jeremiah.<sup>4</sup> According to the Academy’s website, it has three main focus areas for helping students change—“academically,” “emotionally,” and “spiritually.”<sup>5</sup> Regarding the latter, the website proclaims: “We believe in the Bible.”<sup>6</sup> During the event, students were segregated by gender.<sup>7</sup> Girls were given lectures with religious overtones about keeping their virginity, domestic violence, sexual assault, and suicide.<sup>8</sup> Boys, by contrast, were allowed to play games and compete for monetary prizes.<sup>9</sup>

Some students and parents who attended were shocked to discover that a school-sponsored event was held in a church and that the event was religious in nature. One student observed that the Day of Hope “felt more like a spiritual event than a career and college fair.”<sup>10</sup> At the event, one transgender boy was initially barred from exiting the auditorium with the other boys in his class.<sup>11</sup> And transgender students reported that they experienced bullying by other students during the event, including that some students poured water on their heads without facing any repercussions or reprimands by supervising adults.<sup>12</sup>

EBRS’s involvement in the Day of Hope is alarming. Reports by students and parents make clear that the event harmed students of all genders and had particularly egregious consequences for girls and transgender, non-binary, and gender-nonconforming students. Students were treated differently based on their gender and harmful gender stereotypes. Moreover, EBRS’s sponsorship of the Day of Hope subjected students, including minority-faith and non-religious students, to proselytizing and prayer, infringing on their right to be free from official promotion and imposition of religious messages. We urge you to take immediate steps to investigate this matter and hold accountable those responsible for the abuses, and to guard against future discriminatory conduct, including in any other activities in which the 29:11 Academy is a partner.<sup>13</sup>



PO Box 56157  
New Orleans, LA 70156  
504-522-0628  
laaclu.org

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doubles-down-defense-day-hope-event/ (“The East Baton Rouge Parish School System has partnered with 29:11 Mentoring Families to provide additional support services for students in our district. One of these initiatives is the ‘Day of Hope’ event.”); *see also* Facebook Post, 29:11 Mentoring Families (Sept. 13, 2022, at 3:27 p.m.), <https://www.facebook.com/2911mentorship/photos/a.1589846441132882/5364103337040488> (last visited Sept. 29, 2022) (announcing that “the 29:11 Mentoring Families & EBR Schools presents Day of Hope 2022!” and featuring photos of both EBRS Superintendent Dr. Sito Narcisse and Academy Founder Tremaine Sterling).

<sup>4</sup> The website for the Academy quotes the cited Bible verse: “For I know the plans I have for you, declares the Lord, ‘plans to prosper you and not to harm you, plans to give you hope and a future.’” 29:11 Academy, <https://www.2911mentor.com> (last visited Sept. 29, 2022).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Lussier, *supra* n.1.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *See, e.g.*, 29:11 Academy, <https://www.2911mentor.com> (last visited Sept. 29, 2022) (noting intent to apply “in conjunction with EBR schools” to create a “H.O.P.E. After School Program to provide “Academic Tutoring, Enrichment, and much more”).



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laaclu.org

## I. Factual Background

After an opening presentation for the Day of Hope, boys were asked to leave the auditorium and the girls instructed to remain.<sup>14</sup> At the girls' event, the speakers discussed prayer leadership, domestic violence, sexual assault, the need to forgive those who abuse or assault them, and suicide.<sup>15</sup> They also told girls they should abstain from sex and remain virgins.<sup>16</sup> Specifically, according to one student's account, the first speaker, a pastor, told the girls how she had remained a virgin through high school and college and that everyone knew her as "the good Christian girl" as a result.<sup>17</sup> Another speaker discussed how a man she met on a dating app had attempted to strangle her and told the gathered girls that, "if she had waited for the man God meant for her, then it wouldn't have happened."<sup>18</sup>

The boys, meanwhile, were not presented with any discussion of abstinence, virginity, domestic violence, sexual assault, or any of the other topics covered in the presentation to the girls.<sup>19</sup> After the girls exited the auditorium, the boys reentered and were asked to compete in a push-up contest and play games in exchange for monetary awards.<sup>20</sup> Moreover, as noted above, one transgender boy was initially barred from leaving the auditorium with his male classmates, and transgender students reported that they were bullied and harassed by other students during the event without any intervention by chaperones.<sup>21</sup>

Finally, at least one student "was proselytized over and prayed over," according to her parent.<sup>22</sup> And a photo of the event posted on the school district's Facebook page appears to show students in prayer.<sup>23</sup> During the event, Christian musicians performed a song that focused on "miracles" and "his power."<sup>24</sup>

## II. Legal Concerns

Based on the above reported facts, EBRs's sponsorship of the Day of Hope raises serious legal concerns under First and Fourteenth Amendments to the U.S. Constitution, and Title IX of the Education Amendments of 1972 ("Title IX").

### a. Discrimination based on gender

It is well established that the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution prohibits school officials from discriminating

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<sup>14</sup> Lussier, *supra* n.1.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> See Hemant Mehta, *Louisiana students were tricked into going to church instead of a college fair*, Only Sky (Sept. 23, 2022), <https://onlysky.media/hemant-mehta/louisiana-students-day-of-hope-church-college-fair/>.

<sup>18</sup> *Id.*

<sup>19</sup> Lussier, *supra* n.1.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> EBR Schools Facebook Page, <https://www.facebook.com/EBRPschools/photos/pcb.5210646415701259/5210646305701270> (Sept. 20, 9:40 p.m.) (last visited Sept. 29, 2022).

<sup>24</sup> Gremillion, *supra* n. 2 (video interview of Tremaine Sterling and Henry Harris); *cf.* Henry & Kierra Harris, *Reach for It* (Live), YouTube, <https://www.youtube.com/watch?v=kmCh8CqBoVs> (last visited Oct. 3, 2022).



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against students based on gender. Any different terms or conditions on this basis, including separating students by gender for instruction, must be substantially related to an exceedingly persuasive justification. Such justifications may not rely on “overbroad generalizations about the different talents, capacities, or preferences of males and females.”<sup>25</sup>

In addition, as a recipient of federal funding, EBRS must comply with Title IX and the U.S. Department of Education’s implementing regulations, which prohibit an entity receiving federal funds from carrying out any of its “education programs or activities separately on the basis of sex or requir[ing] or refus[ing] participation therein by any of its students on the basis of sex.”<sup>26</sup> Gender-segregated programs and activities are tolerated only under very limited circumstances.<sup>27</sup> In addition, such separation would require, among other things, advance notice regarding the purpose and justification for the separation, the offering of a substantially equal coeducational alternative, and parents’ specific prior written consent for the single-sex activity.<sup>28</sup> As with the Equal Protection Clause, under Title IX, gender-based separation may not be justified by “overly broad generalizations” about “different talents, capacities, or preferences” based on gender.<sup>29</sup>

Here, EBRS’s Day of Hope subjected students to differential treatment based on gender and harmful gender stereotypes, which resulted in students’ exclusion from, and denial of, equal participation in school programs and activities. During the event, girl was not permitted to participate in the same games, or to compete for the same monetary prizes, as boys. Moreover, unlike boys in attendance, girls were forced to listen to presentations about sex, abstinence, domestic violence, and sexual assault, which a reasonable person would not consider to be part of a college and career day.

Title IX regulations make clear that a recipient of federal funds may not facilitate the participation of students in an educational program that the recipient itself is prohibited from conducting. The recipient of funding also must ensure that the operator of any program “takes no action affecting any . . . student[s]” that the recipient itself is prohibited from taking.<sup>30</sup> In other words, EBRS was obligated to ensure that EBRS students were not discriminated at during the Day of Hope even though the event was also co-sponsored by the 29:11 Academy.

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<sup>25</sup> See *United States v. Virginia*, 518 U.S. 515, 533 (1996); *Miss. Univ. for Women v. Hogan*, 548 U.S. 718 (1982); *Doe v. Vermilion Parish Sch. Bd.*, 421 F. App’x 366, 372 (5th Cir. 2011) (gender-based segregation of public-school classes subject to intermediate scrutiny).

<sup>26</sup> 20 U.S.C. § 1681(a); see also 34 C.F.R. §§ 106.34(a). See, e.g., *Vermilion Parish Sch. Bd.*, 421 F. App’x at 372; *Doe v. Wood Cnty. Bd. of Educ.*, 888 F. Supp. 2d 771 (S.D.W.V. 2012).

<sup>27</sup> Gender separation is generally consistent with Title IX for contact sports in physical education and classes dealing with human sexuality. 34 C.F.R. §§ 106.34 (a)(1) and (3). Louisiana law prohibits instructors from teaching religious beliefs or the “subjective moral and ethical judgments of the instructor or other persons” in any sex education course and permits parents to opt their children out of such courses. La. Rev. Statutes §17:281(A)(2) and (D).

<sup>28</sup> 34 C.F.R. § 106.34 (b); Dep’t of Education, *Questions & Answers on Title IX & Single-Sex Elementary & Secondary Classes & Extracurricular Activities* 21 (Dec. 1, 2014), <https://www2.ed.gov/about/offices/list/ocr/docs/faqs-title-ix-single-sex-201412.pdf>.

<sup>29</sup> *Questions & Answers on Title IX*, supra n. 27, at 20, 21.

<sup>30</sup> 34 C.F.R. § 106.31 (d).

## b. Discrimination against transgender students

Both the Equal Protection Clause of the Fourteenth Amendment and Title IX likewise protect transgender students from sex discrimination in federally funded educational programs and activities, requiring that transgender students be treated in accordance with their gender identity in these same programs and activities.<sup>31</sup> Forcing transgender students to participate in sex-segregated activities inconsistent with their gender identity constitutes impermissible sex discrimination for at least three distinct reasons.

First, treating transgender students differently than their cisgender peers inherently constitutes sex discrimination because, “[i]t is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.”<sup>32</sup> Second, it constitutes unlawful sex discrimination because it punishes transgender students for their gender non-conformity and failure to adhere to sex stereotypes associated with their sex assigned at birth.<sup>33</sup> Third, treating transgender students differently due to their gender transition necessarily constitutes sex discrimination.<sup>34</sup>

In addition to protecting transgender students from discrimination on the basis of sex in federally funded educational programs and activities and by school officials, the Equal Protection Clause of the Fourteenth Amendment and Title IX impose liability where school officials act with deliberate indifference in failing to protect students from bullying and harassment on the basis of sex, as appears to be the case here.<sup>35</sup>

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<sup>31</sup> See *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 606-619 (4th Cir. 2020); *Whitaker v. Kenosha Unified Sch. Dist.*, 858 F.3d 1034, 1048-52 (7th Cir. 2017); *Dodds v. U.S. Dep’t of Educ.*, 845 F.3d 217, 221 (6th Cir. 2016); *A.H. ex rel. Handling v. Minersville Area Sch. Dist.*, 408 F.Supp.3d 536 (M.D. Pa. 2019); *M.A.B. v. Bd. of Educ.*, 286 F.Supp.3d 704 (D. Md. 2018); *Evancho v. Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267 (W.D. Pa. 2017); *Bd. of Educ. v. U.S. Dep’t of Educ.*, 208 F. Supp. 3d 850 (S.D. Ohio 2016).

<sup>32</sup> See *Bostock v. Clayton County*, 140 S. Ct. 1731, 1742 (2020).

<sup>33</sup> Sex discrimination encompasses any differential treatment on the basis of “sex-based considerations.” See *Price Waterhouse v. Hopkins*, 490 U.S. 228, 251 (1989). This includes differential treatment based on gender non-conformity. See *EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.* 884 F.3d 560, 576-77 (6th Cir. 2018), *aff’d sub nom. Bostock*, 140 S. Ct. 1731 (“There is no way to disaggregate discrimination on the basis of transgender status from discrimination on the basis of gender non-conformity.”). Indeed, “[m]any courts . . . have held that various forms of discrimination against transgender people constitute sex-based discrimination . . . because such policies punish transgender persons for gender non-conformity, thereby relying on sex stereotypes.” *Grimm*, 972 F.3d at 608; see also, e.g., *Glenn v. Brumby*, 663 F.3d 1312, 1316 (11th Cir. 2011) (“A person is defined as transgender precisely because of the perception that his or her behavior transgresses gender stereotypes.”); *Fabian v. Hosp. of Cent. Conn.* 172 F. Supp. 3d 509, 526 (D. Conn. 2016) (discrimination based on sex includes “discrimination because of the properties or characteristics by which individuals may be classified as male or female”).

<sup>34</sup> “[D]iscrimination ‘because of sex’ inherently includes discrimination against employees because of a change in their sex.” *Harris Funeral Homes*, 884 F.3d at 575. Just as discrimination based on religious conversion is necessarily based on religion, discrimination based on gender transition is necessarily discrimination based on sex. *Schroer v. Billington*, 577 F. Supp. 2d 293, 306-07 (D.D.C. 2008); see also *Flack v. Wisc. Dep’t of Health. Serv.*, 328 F.Supp.3d 931, 949 (W.D. Wisc. 2018).

<sup>35</sup> See *Davis ex rel. LaShonda D. v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629 (1999); see generally *Regalado v. Ga. State Univ.*, 2020 WL 5815924, \*5 (N.D. Ga. 2020) (finding Title IX’s protection against sex discrimination plausibly extends to bullying and/or harassment based on transgender status).



PO Box 56157  
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504-522-0628  
laaclu.org

### c. School-sponsored promotion of religion

Public-school sponsorship of religious events and messages is impermissible under the Establishment Clause of the First Amendment to the U.S. Constitution.<sup>36</sup> The Supreme Court recently reaffirmed that school officials are barred from sponsoring religious activity or otherwise proselytizing students, especially in situations where students are a captive audience.<sup>37</sup> These constitutional protections against school-sponsored religion extend beyond the walls of the public-school classroom to include all school-sponsored events.<sup>38</sup> And, just as school officials may not themselves exploit school-organized events to promote religion, neither may they permit others to do so.<sup>39</sup>

Co-sponsoring the Day of Hope with a private organization and hosting it at an off-campus venue—here, a church—does not cure the constitutional violation because “a state may not induce, encourage or promote private persons to accomplish what it is constitutionally forbidden to accomplish.”<sup>40</sup> On the contrary, the federal courts have recognized that a public-school event that features religious content and is held in a church violates the Establishment Clause.<sup>41</sup> In partnering with a religious organization to hold an event—at a church, no less—during which students were proselytized by a pastor and other speakers and were apparently subjected to prayer



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New Orleans, LA 70156  
504-522-0628  
laaclu.org

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<sup>36</sup> See *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 309 (2000); see also *Lee v. Weisman*, 505 U.S. 577, 586 (1992); *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 205 (1963); *Engel v. Vitale*, 370 U.S. 421, 436 (1962).

<sup>37</sup> In *Kennedy v. Bremerton School District*, the Supreme Court upheld the right of a public-school employee to engage in a quiet and private act of prayer that was not endorsed by the school, fell outside the employee’s official responsibilities, did not involve or coerce students, and was not imposed on a captive audience. See 142 S. Ct. 2407, 2432 (2022) (distinguishing permissible employee prayers from school-sponsored ones where, among other factors, “[t]he prayers for which Mr. Kennedy was disciplined were *not* publicly broadcast or recited to a captive audience”; “[s]tudents were *not* required or expected to participate” and “*none* of Mr. Kennedy’s students did participate”) (emphasis added). All of these elements were critical to the decision, and prayers or proselytizing at school events that do not share these features are unconstitutional.

<sup>38</sup> See e.g., *Santa Fe*, 530 U.S. at 313 (football games); *Lee*, 505 U.S. at 586 (graduation ceremonies); *Ingebretson v. Jackson Pub. Sch. Dist.*, 88 F.3d 274, 279-80 (5th Cir. 1996) (school assemblies); *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402, 406-07 (5th Cir. 1995) (basketball games and practices); *Steele v. Van Buren Pub. Sch. Dist.*, 845 F.2d 1492, 1495 (8th Cir. 1988) (band practice and performances).

<sup>39</sup> See e.g., *Lee*, 505 U.S. at 586 (public school could not invite clergy to deliver prayer at high-school graduation ceremony); *McCollum v. Bd. of Educ.*, 333 U.S. 203 (1948) (school district could not permit clergy and other representatives from local religious organization to teach religious classes to students on campus during the school day, even where students had parental permission to attend); *Doe v. South Iron R-1 Sch. Dist.*, 498 F.3d 878 (8th Cir. 2007) (school could not permit Gideons to distribute Bibles to fifth-grade students on campus during school day); *Doe v. Porter*, 370 F.3d 558 (6th Cir. 2004) (school district could not permit volunteer instructors from local Christian college to conduct Bible Education Ministry classes, which taught the Bible as truth, at elementary schools during school day); *Berger v. Rensselaer Cent. Sch. Corp.*, 982 F.2d 1160 (7th Cir. 1993) (prohibiting Bible distributions by outside guests).

<sup>40</sup> *Norwood v. Harrison*, 413 U.S. 455, 465 (1973); see also *Rutan v. Republican Party of Ill.*, 497 U.S. 62, 77-78 (1990) (“What the First Amendment precludes the government from commanding directly, it also precludes the government from accomplishing indirectly); *Nat’l Black Police Ass’n, Inc. v. Velde*, 712 F.2d 569, 580 (D. D.C. 1983) (“Activities that the . . . government could not constitutionally participate in directly cannot be supported indirectly through the provision of support for other persons engaged in such activity.”).

<sup>41</sup> See generally *Doe v. Elmbrook School Dist.*, 687 F.3d 840 (7th Cir. 2012) (en banc).

as a captive audience, EBRS has shown a deep disregard for students' religious-freedom rights.<sup>42</sup>

### III. Conclusion

For the reasons explained above, the ACLU and the ACLU of Louisiana have serious concerns that EBRS's Day of Hope event, by segregating students based on gender and imposing religion on them, violated the First and Fourteenth Amendments to the U.S. Constitution, Title IX, and Louisiana law.

The ACLU respectfully requests a meeting with the EBRS officials to discuss these concerns. In addition, please provide the records identified in the attached Public Records Act request.

Thank you for your prompt attention to this matter. Please direct your response to this letter to Chris Kaiser, Advocacy Director for the ACLU of Louisiana, at [ckaiser@laaclu.org](mailto:ckaiser@laaclu.org). In the meantime, please do not hesitate to contact us if you have any questions regarding this letter.



PO Box 56157  
New Orleans, LA 70156  
504-522-0628  
[laaclu.org](http://laaclu.org)

Sincerely,

Chris Kaiser  
ACLU of Louisiana

Amy Lynn Katz  
Linda S. Morris  
ACLU Women's Rights Project

Meredith Taylor Brown  
ACLU Jon L. Stryker and Slobodan Randjelović  
Lesbian, Gay, Bisexual, Transgender,  
Queer & HIV Project

Heather L. Weaver  
ACLU Program on Freedom  
of Religion and Belief

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<sup>42</sup> While partnerships with religious groups are permissible in some forms, public schools may not participate in, or appear to endorse, religious activities organized by religious groups. Nor may they, in connection with such partnerships, allow school-sponsored proselytizing of students or give churches and religious organizations special access to recruit students to join or attend religious events. *See, e.g., McCollum*, 333 U.S. at 209-10 (pointing to "close cooperation between the school authorities and the religious council in promoting religious education" in deeming school partnership with religious education council unconstitutional); *Porter*, 370 F.3d at 564 (holding that school district's partnership with Bible Education Ministry to provide Bible classes on campus during school day violated the Establishment Clause).